IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 333 of 2006
With
CIVIL APPLICATION No. 2522 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
AND
HONOURABLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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N.M. JOSHI & 2 - Appellant(s)
Versus
S M SAIYAD & 6 - Respondent(s)

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Appearance :
MR MUKUL SINHA for Appellant(s) : 1 - 3.
MR PARESH UPADHYAY for Respondent(s) : 1,
MS HANSA PUNANI, AGP for Respondent(s) : 2,
NOTICE SERVED BY DS for Respondent(s) : 3 - 7.

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH
and
HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 20/04/2006
ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.S.SHAH)

Admit. Mr Paresh Upadhyay, Mr DA Bambhania and Ms Hansa Punani, learned AGP waive service of notice of admission for the respective respondents.

2. This appeal is directed against the interlocutory order dated 16.2.2006 passed by the learned Single Judge in Civil Application No. 1733 of 2006 in Special Civil Application No. 16144 of 2005, modifying the previous interlocutory order dated 18.10.2005 passed by another learned Single Judge in the said petition (i.e. SCA No. 16114 of 2005). By the said order dated 18.10.2005, the appellants herein and similarly situate persons were protected against reversion from the cadre of Deputy Conservators of Forest (DCFs). The order dated 16.2.2006 under appeal watered down that protection to certain extent.

3. The controversy in this appeal as in the main petition is about the seniority in the cadre of Assistant Conservators of Forest. Although the main controversy as framed by the petitioners (who are appellants herein) is about their placement in the final seniority list dated 30.6.2005 of the ACFs as on 1.1.2005 vis-a-vis the other promotees in the cadre of ACFs, it was brought to the notice of the learned Single Judge hearing Civil Application No. 1733 of 2006 filed by the directly recruited ACFs

that the interim protection granted by the order dated 18.10.2005 in the petition (to which directly recruited ACFs were not joined as parties) has adverse impact on the directly recruited ACFs in the matter of promotion to the higher cadre of Deputy Conservators of Forest (DCFs).

4. By order dated 18.10.2005, the learned Single Judge held that the proviso to Rule 7 of the Gujarat Forest Department (Forest Officers Examination) Rules, 1972 was not implemented for a period of 20 years and that the said proviso prior to its amendment on 6.3.1993 was being invoked 20 years after the appellants herein and the concerned promotee-respondents were promoted as ACFs prior to 6.3.1993. The learned Single Judge took the prima facie view that the State Government should not be permitted now to invoke the rule of seniority which was not operated for several decades so as to adversely affect the service conditions of the officers. The learned Single Judge accordingly gave the following direction while passing the interlocutory order dated 18.10.2005 :-

> “... pending this petition, it is directed that the impugned seniority list published on 30th June, 2005 may be operated to govern further promotions from the cadre of Assistant Conservator of Forests to be made hereafter but shall not be operated retrospectively so as to revert Assistant Conservators of Forests or Deputy

> Conservators of Forests who were already promoted prior to the date of publication of the seniority list i.e. 30th June, 2005.
>
> The operation of the impugned seniority list pending this petition, as aforesaid, shall be subject to the result of this petition."

Thereafter the directly recruited ACFs moved Civil Application No. 1733 of 2006 as indicated above for vacating the order dated 18.10.2005. After hearing the learned counsel for the parties belonging to three groups, i.e. two groups of promotees and one group of direct recruits, the learned Single Judge passed the following order dated 16.2.2006 in Civil Application No. 1733 of 2006 which order is under appeal before us :-

> "Therefore, if the reversion is to follow on account of the alteration of the seniority list of promote Assistant Conservators of Forest by invoking of Rule 7, the same is stayed and to that extent if the interim relief is continued, possibly the applicant also cannot make any valid grievance in the present proceedings. However, if seniority stands altered, on account of the adjustment of the quota of direct recruitees vis-a-vis promotee, Assistant Conservators of Forest, in the final seniority list, as it is not the subject matter of this petition, the reversion, if any, on the said aspects due to operation of the final seniority list was not stayed and is not stayed. Therefore, the earlier order dated 18.10.2005 shall continue to operate till final disposal of

this petition, subject to the aforesaid modification."

5. When this appeal came up for hearing on 6.3.2006, this Court passed by the following order :-

"Notice returnable on 13th March, 2006.

In the meantime, the respondents shall not make any reversion from the cadre of Deputy Conservators of Forest on the basis of the order dated 16.2.2006 of the learned Single Judge in Civil Application No. 1733 of 2006.

It is clarified that if the respondents have any doubt, the respondents shall proceed on the basis of the order dated 18.10.2005 of the learned Single Judge in Special Civil Application No. 16114 of 2005.

It is further clarified that in case any Assistant Conservators of Forest are due for promotion as Deputy Conservators of Forest and they can be promoted as Deputy Conservators of Forest without reverting any present incumbents on the pasts of Deputy Conservator of Forest, this order does not preclude the Government from doing so."

The above interim order was passed in view of the submission made on behalf of the appellants that the appellants had no dispute with the directly recruited ACFs and that the purported clarification of the order dated 18.10.2005 by the learned Single Judge was likely to complicate the issue and, therefore, the order dated 16.2.2006 was required to

be set aside.

It also appears that during pendency of this appeal, the State Government issued orders dated 13.3.2006 promoting 8 ACFs to the cadre of DCFs.

6. At the hearing of this appeal, a grievance was made by Mr Upadhyay for the direct recruits that the promotion order dated 13.3.2006 was issued to pre-empt the Court from passing any orders which the Court did pass on 14.3.2006 restraining the respondents from making any promotions to the cadre of DCFs till 31.3.2006 as the Court wanted to examine the impact of the interim order dated 18.10.2005 as well as of the modification dated 16.2.2006.

On merits of the controversy, which is the subject matter of this appeal, Mr Upadhyay submitted that on account of the dispute between the two group of promotees in the matter of their seniority in the cadre of Range Forest Officers or in the matter of their seniority in the cadre of ACFs, the direct recruit - ACFs cannot be made to suffer any prejudice.

While detailed reference was made to the relevant seniority lists issued from time to time, the submission was sought to be driven home with the

aid of the following illustration :-

Seniority in the cadre of ACFs

	(i) On basis of date of promotion/ appointment as ACFs	(ii) As per seniority list dated 5.5.2000 of ACFs	(iii) As per seniority list dated 30.6.2005 of ACFs	(iv) Effect of order dated 18.10.2005 on seniority of ACFs for promotion as DCFs
(1)	A (Promotee)	A	C	A
(2)	B (DR)	B	B	C
(3)	C (Promotee)	C	A	B

It was submitted that “A” group of promotees has already secured promotion to the cadre of DCFs on the basis of their higher placement in the seniority list dated 5.5.2000, but by virtue of the order dated 18.10.2005 of the learned Single Judge, they have secured protection against their reversion required in order to promote direct recruit ACFs as DCFs because “A” group of employees are lower down in the seniority list dated 30.6.2005. But now the other group of promotees “C” group who were promoted as ACFs later on are staking their claim for promotion to the cadre of DCFs by virtue of their higher seniority in the list dated 30.6.2005. It is submitted that whatever may be the dispute between “A” group of promotees and “C” group of promotees, both groups cannot be permitted to steal a march over

the direct recruits - “B” group. Therefore, the learned Single Judge rightly modified on 16.2.2006 the previous order dated 18.10.2005.

7. Dr Mukul Sinha for the appellants submitted that “A” group of employees were promoted from the cadre of Range Forest Officers to ACFs prior to 6.3.1993 and they were shown senior to “C” group of promotees in the seniority lists of Range Forest Officers published in the years 1983 and 1987 and that having been shown senior to the “C” group of employees in the cadre of Range Forest Officers since 1983, and on that basis the “A” group employees were also promoted as ACFs much earlier between 1983 and 1986. “C” group employees were promoted in 1988 and 1989. For determining the seniority in the cadre of ACFs, there is no specific rule. Hence on the basis of the ordinary rule of continuous officiation, the “A” group employees (who had already been promoted as ACFs between 1983 and 1986 which promotions were never challenged at the relevant time) were subsequently promoted as DCFs in 1997 (appellant No.1) and in 2003. The order dated 18.10.2005 was rightly passed in favour of the appellants and no modification was called for which could create complications because the ACFs directly recruited in 1986-87 (“B” group) cannot be permitted to take advantage of the seniority list published on 30.6.2005 so as to entail reversion of the

appellants.

8. Mr Bambhania for “C” group employees submitted that they are shown senior to both the direct recruits (“B” group) and promotees of “A” group in the final seniority list dated 30.6.2006 and, therefore, they are entitled to be considered for promotion to the cadre of DCFs in accordance with the final seniority list dated 30.6.2005.

Mr Bambhania submitted that when his clients had filed a contempt petition against the authorities making a grievance against the Government's inaction in not finalizing the seniority list of ACFs, on 26.4.2005 the Division Bench of this Court to which one of us was a party (M.S. Shah, J.) had directed the Government to finalize the seniority list and to operate the same and not to operate the provisional seniority list.

9. Ms Hansa Punani, learned AGP has submitted that in view of the conflicting rival submissions coming from three different groups, the authorities are prepared to leave the matter to the Court, but the authorities would at least like to have clear directions because the modification dated 16.2.2006 to the previous direction dated 18.10.2005 does not give any specific direction as to how the authorities are to adjust promotions already given to the cadre

of DCFs or to give further promotions to the cadre of DCFs.

10. Having heard the learned counsel for the parties, it appears that a few facts clearly emerge from the record :-

10.1 “A” group of employees were promoted as ACFs before 6.3.1993 on the basis of their seniority in the seniority list of Range Forest Officers published in the years 1983 and 1987 wherein they were shown senior to “C” group of promotee ACFs.

10.2 The promotions of “A” group of employees as ACFs made between 1983 and 1986 were never challenged at the relevant time, but it was in the year 1991 that “C” group of employees had prayed for directions to the authorities to prepare the seniority list as per the extant seniority rules. Although a statement was made on behalf of the Government that the seniority list would accordingly be published, the seniority list published in the year 1994 was challenged before this Court in which the Court gave the following directions :-

> “Special Civil Application No. 6325/94 and Special Civil Application No. 7611/98 are partly allowed to the following extent :-
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> A It is declared that the respondent

authorities acted illegally in operating the seniority list dated 3.2.1994 reflecting the position of the Range Forest Officers as on 1.1.1991 for the purpose of granting promotions to the cadre of Assistant Conservators of Forests after 6.3.1993 and that promotions given by the respondent authorities from the cadre of Range Forest Officers to the cadre of Assistant Conservators of Forest from 6.3.1993 onwards were not in accordance with the Gujarat Forests Departmental (Forest Officers Examination) Rules, 1972 as amended by the Amendment Rule contained in the Government Notification dated 6.3.1993.

B It is directed that -

(1) the respondent authorities shall prepare a fresh seniority list of Range Forest Officers reflecting their seniority as on 6.3.1993 on the basis of the aforesaid Departmental Examination Rules of 1972 as amended by the Government Notification dated 6.3.1993. Such seniority list shall cover all the employees holding the posts of Range Forest Officer (previously designated as Rangers) as on 6.3.1993.

(2) Thereafter with effect from 6.3.1993 the respondent authorities shall readjust the promotions to the cadre of Assistant Conservators of Forests on the basis of such fresh seniority list of Range Forest Officers. However, the officers

who were actually promoted from the cadre of Range Forest Officers to the cadre of Assistant Conservators of Forests between 6.3.1993 (the date of notification amending the proviso to Rule 7) and 12.10.1998 (the date on which for the first time this Court made the promotions to the cadre of Assistant Conservators of Forests subject to the result of Sp.C.A. No.7611/98) shall not be reverted, but for the purpose of determining seniority in the cadre of Assistant Conservators of Forests, their promotions shall be adjusted as regular promotions as and when they become due for promotion to the cadre of Assistant Conservators of Forests on the basis of the fresh seniority list to be prepared by the respondent authorities as per the aforesaid direction.

(3) Henceforth the respondent authorities shall give promotions from the cadre of Range Forest Officers to the cadre of Assistant Conservators of Forests on the basis of the fresh seniority list to be prepared by the respondent authorities as per the above direction.”

10.3 For the employees promoted from the cadre of Range Forest Officers to ACFs till 9.3.1993, no Court had set aside the promotions given at the relevant time. On the contrary on 5.5.2000, the State Government published a provisional seniority list of

ACFs promoted during the period from 1.4.1985 to 31.3.1999. In the said seniority list also, “A” group of ACFs were shown senior to “B” and “C” group of ACFs on the basis of the date of continuous officiation subject to adjustment of quota between direct recruits and promotees. It was this list which was operated for the promotion to the cadre of DCFs till publication of final seniority list dated 30.6.2005.

10.4 It was for the first time in the provisional seniority list dated 8.4.2005 that “A” group of ACFs came to be shown junior to “C” group of ACFs. It was for the first time on 13.3.2006 that the final seniority list dated 30.6.2005 came to be operated for the purpose of giving promotions to the cadre of DCFs, but in view of the direction granted in favour of “A” group of employees by interlocutory order dated 18.10.2005 “A” group of employees were not reverted.

11. As regards the direction given in the contempt proceedings initiated by “C” group of employees, this Court had not gone into the merits of the dispute about seniority and all that the Contempt Bench had done while passing the order dated 26.4.2005 was to direct the authorities to complete the exercise of finalizing the seniority list for the cadre of ACFs on 30.6.2005 and to direct that the

respondent authorities will not operate the earlier provisional seniority list and that for the purpose of promotions to the cadre of DCFs, the respondents will operate either the final seniority list to be published hereafter or the provisional seniority list as on 1.1.2005. In absence of the other affected groups, the Court had not (and could not have) gone into the merits of the controversy about the legality, correctness or otherwise of the promotions on the basis of the provisional seniority list dated 1.1.2005 or the final seniority list which was yet to be published by the Government.

12. The seniority list dated 5.5.2000 was prepared on the basis of the following principles:-

> "(i) The actual number of appointments made in a year has been taken as the number of vacancies in that year.
>
> (ii) The number of vacancies has been distributed between promotee officers and direct recruits according to the ratio of recruitment applicable from time to time i.e. 2 promotees against 1 direct recruit.
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> (iii) The officers in excess of their prescribed quota in a particular year have been pushed down to the subsequent year(s) in which they get their berth according to their quota in the relevant year.
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> (iv) As laid down by the Forest & Environment Department GR dated

31.1.1992 the seniority of the directly recruited Assistant Conservator of Forests after 8.5.79 has been decided including their training period at F.R.I.

(v) The financial year has been taken as a unit of the year.

(vi) As per the provisions of this department's GR dated 31.1.92, the seniority of the directly recruited A.C.Fs is to be fixed from the date of their being sent for training and therefore the merit rank of these officers on that date will obviously be the rank obtained by them in the select list released by the Gujarat Public Service Commission. It is also not a matter of dispute that the Hon'ble Supreme Court has upheld this GR dated 31.1.92. It is also provided in the G.A.D. GR dated 20.5.87 that normally the seniority of the directly recruited officers is to be determined with reference to the merit rank given by the Public Service Commission. It is also noteworthy to state that there is neither any specific provision regarding the fixation of seniority in the Recruitment Rules of the A.C.F. nor the Government has issued any such instructions in this behalf. Under these circumstances, the inter se seniority of the directly recruited officers have been fixed as per their ranks in the selection list released by the G.P.S.C.

As the calculation of the number of vacancies for the years have been shown in the Annexure – A appended to this GR and the placement of the officers either direct or promotee has been made accordingly in the Annexure-B.”

13. Having regard to the aforesaid facts and having regard to the dates of promotion and direct recruitment of ACFs in three different categories, and also having regard to the fact that the seniority position of ACFs has continued for the last about 15 to 20 years as per the position which has been reflected in the seniority list dated 5.5.2000 (albeit provisional list), it appears to the Court that the interests of justice require that both the interlocutory order dated 18.10.2005 and the modification order dated 16.2.2006 need to be substituted by the following interim arrangement which shall operate during pendency of Special Civil Application No. 16114 of 2005 and also during pendency of Special Civil Application No. 23193 of 2005 filed by the direct recruits in so far as the controversy revolves around seniority of ACFs, either promoted or directly recruited, for the period upto 5.3.1993 :-

(i) Promotions and reversions to the cadre of Deputy Conservators of Forest shall be made on the basis of the aforesaid seniority list dated 5.5.2000, in case of ACFs who were promoted/directly recruited upto 5.3.1993.

(ii) However, if any officer is promoted to the cadre of DCFs on account of operation of the roster in favour of Scheduled Castes/Scheduled Tribes, such officers shall not be liable to reversion by virtue of operation of the seniority list dated 5.5.2000.

(iii) This direction shall be implemented within a period of two months from today, that is to say, the consequential orders of promotion/reversion will be issued by 30th June 2006.

(iv) Promotions and reversions which may be made on the basis of the directions given in this judgment shall abide by the final outcome of the writ petitions.

14. It is also directed and clarified that -

(a) The order dated 8.12.2005 passed by the learned Single Judge in Special Civil Application No. 23193 of 2005 shall also stand modified in terms of the above directions.

(b) This interim arrangement shall be treated as interim arrangement during pendency of Special Civil Application Nos. 16114 and 23193 of 2005 and any other petitions which may have been filed or may be filed in relation to the seniority of ACFS who were promoted or directly recruited during the period upto 5.3.1993.

(c) In view of the above directions, it necessarily follows that the operation of the final seniority list dated 30.6.2005 (part I) relating to the officers promoted or directly recruited to the cadre of ACFs till 5.3.1993 shall remain in abeyance till final disposal of Special Civil Application Nos. 16114 and 23193 of 2005.

15. The appeal is disposed of in terms of the aforesaid directions and clarifications in paras 12 and 13 of this judgment.

16. Since the appeal is disposed of, the Civil Application does not survive and the same is accordingly disposed of.

[M.S. SHAH, J.]

[HARSHA DEVANI, J.]

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